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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AL/LSC/2013/0609**
Property	:	**18 properties at Titmuss Avenue, Moorings, SE28 8DH**
Applicant	:	**Gallions Housing Association**
Representative	:	**Mr W Beglan of Counsel**
Respondent	:	**The long leaseholders of 18 flats at Titmuss Avenue who are listed in the schedule to the application**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Ms N Hawkes** **Mr D Jagger MRICS** **Ms S Wilby**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **21st and 22nd January 2014**
Date of the Tribunal's Determination and date of decision	:	**14th February 2014 and 10th March 2014**

DECISION

Decisions of the tribunal

Upon the tribunal having made findings under the various headings below, the tribunal invites the applicant by 9.4.14 to calculate the sum which is payable by each respondent and to serve a schedule setting out the relevant figures on each of the respondents and on the tribunal.

The application

1. The applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the estimated costs of proposed major works.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The applicant was represented by Mr Beglan of Counsel at the hearing and the respondents appeared in person. Although not formally representing the other leaseholders, Mr and Mrs Lucas of 42 Titmuss Avenue did the majority of the advocacy on behalf of the respondents and with other leaseholders adding additional points if they wished to do so.

4. At the commencement of the hearing, the applicant handed in some schedules compiled from the documentation already in the bundles.

The background

5. The property which is the subject of this application comprises three blocks of flats/maisonettes. In these blocks, 18 properties are owned by long leaseholders (numbers 7, 8, 9, 10, 11, 12, 13, 22, 24, 28, 34, 35, 40, 42, 43, 49, 50 and 57).

6. The applicant housing association intends to carry out major works to the blocks ("the major works"). The major works include roof replacement and associated work; window replacement; door entry system replacement; concrete repairs; decoration; and repairs to external store rooms at ground floor level.

7. The applicant intends to carry out the major works under a long term contract and it was not disputed that the statutory consultation process

had been complied with prior to the applicant entering into this long term agreement.

8. The tribunal inspected the property before the hearing in the presence of representatives of the applicant landlord and Mrs Lucas.

9. The respondents hold long leases of the flats in the three blocks which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases and will be referred to below, where appropriate.

The issues

10. During the course of the hearing the parties identified the relevant issues for determination as follows:

    (i) Whether in respect of flats 9, 10, 22, 42 and 43 the sheds are demised to the leaseholders.

    (ii) Whether in respect of flats 8, 12, 24, 35 and 40 the windows are demised to the leaseholders.

    (iii) Whether the estimated costs of repairing the windows are reasonable.

    (iv) Whether the door entry systems require replacement and, if so, whether the estimated costs are reasonable.

    (v) Whether the estimated costs of repairs to the sheds are reasonable.

    (vi) Whether the leaseholders of flats 42 and 43 are required to contribute towards the costs of installing handrails to the roofs.

    (vii) Whether it is reasonable to charge an administration fee of 10%

    (viii) Whether the leaseholders of flat 42 should be required to contribute towards the costs of the window replacement programme.

11. It was agreed between the parties that for the purposes of the major works which are the subject of this application and save that flat 22 will pay 1/77 of the relevant costs as set out in the lease for flat 22:

(i) the proportion of the relevant costs payable by leaseholders in block 1 will be 1/15;

(ii) the proportion of the relevant costs payable by the leaseholders in block 2 will be 1/16;

(iii) the proportion of the relevant costs payable by block 3 will be 1/20.

12. The roofs of blocks 1 and 3 have been given surface treatments and block 2 already has a new asphalt coating. It was agreed that the leaseholders of block 2 will not be charged in respect of the current roof works. It was also agreed that, the surface coating having failed prematurely, the cost of this element would be deducted from the charges to the leaseholders of blocks 1 and 3.

13. The respondents stated that they would like to discuss with the applicant the possibility of carrying out additional work to renew the asphalt surfaces of the walkways. The applicants' representatives indicated, without committing themselves at this stage to any particular course of action, that they would be willing to engage in such discussions.

14. Having heard evidence and submissions from the parties and considered all of the documents referred to, the tribunal has made determinations on the various issues as follows.

Whether the window-frames of flats 8, 12, 24, 35 and 40 are demised to the leaseholders

15. The relevant clause of the leases provides that the flat includes: "the glass in window-frames the window-frames catches sashes window locks and window furniture of the Flat."

16. The applicant argued that the reference to "window frames" in this context is a reference to part of the window furniture. Mr Lucas argued that the word "window-frames" should be given its ordinary and natural meaning. The tribunal prefers Mr Lucas's argument. Window furniture is specified separately and the tribunal is not satisfied that there are grounds for giving the word "window-frames" anything other than its ordinary meaning. Whilst the tribunal did not rely upon this schedule in reaching its decision, the tribunal notes that in the schedule provided by the applicant the window frames of the relevant flats are said to be demised.

17. Accordingly, in respect of the relevant flats the tribunal finds that the window frames are demised to the leaseholders.

Whether the sheds/store rooms of flats 8, 12, 24, 35 and 40 are demised to the leaseholders

18. The applicant relied upon the fact that the boundaries are general and submitted that the store rooms are not included in the demised arguing that this was unlikely to have been intended. In response, Mr Lucas relied upon the use of the express words "Store to be included in sale" as demonstrating that the sheds are demised.

19. Further, there are two storerooms side by side only one of which is used by the leaseholder of the flat in question. Mr Lucas also relied upon the fact that only the area covered by the store room used by the flat in question has been hatched on the plans. The tribunal prefers Mr Lucas' arguments and finds that the store rooms/sheds of the flats in question are demised to the leaseholders.

The estimated costs of repairing the windows

20. As stated above, the applicant intends to carry out this work pursuant to the terms of its long term agreement (which was entered into in 2006). The applicant states that the estimates were put together with advice from a quantity surveyor.

21. The respondents have obtained some alternative quotations from Crystal which are lower than the figures put forward by the applicant and they argued that in the case of major works there should be economies of scale whereas their quotations were for works to individual properties. They stated that Crystal is a decent company and that the Crystals windows are shatter proof, have a 10 year guarantee, and comply with the relevant regulations.

22. The applicant argued that the quotations are not necessarily like for like and that, in particular, the Crystal quotations do not include provision for the removal of asbestos. The applicant stated that the applicant's proposed windows are type A in term of energy efficiency; that they have a 10 year warranty; and that they are intended to last for 30 years. It was emphasised on behalf of the applicant that less than half of the properties in the blocks are occupied by long leaseholders and that the applicant is looking for value for money in respect of the costs in connection with its tenanted properties.

23. The tribunal accepts that the applicant has not produced the cheapest possible quotation but finds having considered all of the evidence that the applicant's estimated charges for the costs of replacing the window are within the range of reasonable charges.

The door entry systems

24. There have been 19 call outs in total over a two year period to carry out work to the four door entry systems serving the blocks. The tribunal was informed that parts for these door entry systems are becoming difficult to obtain (but it was not informed that parts are currently impossible to obtain).

25. Having inspected the door entry systems, they appeared to be in reasonable overall condition and the tribunal is not satisfied that they currently require complete replacement. However, the tribunal notes that the door entry systems may require replacement in a couple of years' time as part of a planned maintenance program.

Whether the estimated costs of repairs to the sheds are reasonable

26. The respondents obtained some quotations for the cost of repairs to the sheds which were cheaper than the figures put forward by the applicant. They stated that these were quotations for work to individual properties and that they would expect economies of scale in the case of the estimates provided by the applicants. The applicant again argued that the quotations were not like for like.

27. The respondents also argued that the applicant's proposed glass fibre roof coverings were unsuitable because the sheds currently have glass roofs and the proposed new coverings will not let in the light.

28. The tribunal accepts that the applicant has not produced the cheapest possible quotation but finds having considered all of the evidence that the applicant's estimated charges for the costs of the proposed work to the sheds are within the range of reasonable charges. The tribunal also notes that that the applicant has a degree of discretion and finds that the proposed glass fibre covering is within the range of reasonable options for shed roof coverings. The leases do not require glass roofs to be installed.

Whether the leaseholders of flats 42 and 43 are required to contribute towards the costs of installing handrails to the roofs

29. It was common ground that the leases of flats 42 and 43 do not require the leaseholders to contribute towards the costs of improvements. The applicant argued that the handrails are not an improvement but a health and safety requirement. However, the applicant could not point to any regulatory requirement to the effect that handrails must be installed and the tribunal finds that the installation of hand rails on the facts of this case constitutes an improvement.

The 10% administration charge

30. Mr Lucas noted that in the context of major works costing a million pounds, 10% would amount to £100,000 which is a large figure. He therefore invited the tribunal to review this charge. The tribunal finds that a 10% administration charge is within the reasonable range and considers that it is usual and reasonable to charge on a percentage basis.

The contribution of flat 42 towards the costs of the window replacement program

31. On 6.4.04, Mr and Mrs Lucas received a letter from a Mrs Lynn Bekir, a Customer Support Team 1 Team leader employed by the applicant, stating: "Further to our recent correspondence, I write to confirm that as you have already had your own windows installed we would not expect to include your property in the window replacement programme. However, you should be aware that if your property is part of a block you will be obligated to contribute your proportion towards the costs of the communal windows in the block, unless you have your own front door and have no direct access to the main block. I trust this clarifies the position for you."

32. It is unfortunate that this letter was sent out and Mr and Mrs Lucas are understandably aggrieved that the applicant is now seeking to charge them costs relating to the windows. However, the tribunal finds that the receipt of this letter is insufficient to amount to a binding agreement between Mr and Mrs Lucas and the applicant. Mr and Mrs Lucas had already had their windows installed when the letter was received and the tribunal finds as a fact that there was no consideration passing from Mr and Mrs Lucas.

Tribunal Judge: Naomi Hawkes

Date: 10.3.14

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.